

**LOCAL GOVERNMENT DISCLOSURE AND CAMPAIGN
FINANCE AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions related to municipal candidate campaign finance disclosures and personal use expenditures.

Highlighted Provisions:

This bill:

- defines terms;
- authorizes a municipality to adopt more stringent campaign finance disclosure requirements and definitions;
- clarifies campaign finance filing deadlines;
- authorizes a municipality to adopt more stringent personal use expenditure requirements and definitions;
- prohibits a municipal candidate from making a personal use expenditure;
- provides that a municipality may adopt an ordinance to identify personal use expenditure violations and enforce prohibitions; and
- makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3-208, as last amended by Laws of Utah 2012, Chapters 190, 190, 230, and 230

ENACTS:

10-3-209, Utah Code Annotated 1953

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **10-3-208** is amended to read:

34 **10-3-208. Campaign finance disclosure in municipal election.**

35 (1) ~~[As used in]~~ Unless a municipality adopts by ordinance more stringent definitions,
36 the following are defined terms for purposes of this section:

37 ~~[(a) "Reporting date" means:]~~

38 ~~[(i) 10 days before a municipal general election, for a campaign finance statement~~
39 ~~required to be filed no later than seven days before a municipal general election; and]~~

40 ~~[(ii) the day of filing, for a campaign finance statement required to be filed no later~~
41 ~~than 30 days after a municipal primary or general election.]~~

42 (a) "Agent of a candidate" means:

43 (i) a person acting on behalf of a candidate at the direction of the reporting entity;

44 (ii) a person employed by a candidate in the candidate's capacity as a candidate;

45 (iii) the personal campaign committee of a candidate;

46 (iv) a member of the personal campaign committee of a candidate in the member's
47 capacity as a member of the personal campaign committee of the candidate; or

48 (v) a political consultant of a candidate.

49 (b) "Candidate" means a person who:

50 (i) files a declaration of candidacy for municipal office; or

51 (ii) receives contributions, makes expenditures, or gives consent for any other person to
52 receive contributions or make expenditures to bring about the person's nomination or election
53 to a public office.

54 (c) (i) "Contribution" means any of the following when done for political purposes:

55 (A) a gift, subscription, donation, loan, advance, or deposit of money or anything of
56 value given to a candidate;

57 (B) an express, legally enforceable contract, promise, or agreement to make a gift,
58 subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or
59 anything of value to the candidate;

60 (C) any transfer of funds from another reporting entity to the candidate;

61 (D) compensation paid by any person or reporting entity other than the candidate for
62 personal services provided without charge to the candidate;

63 (E) a loan made by a candidate deposited to the candidate's own campaign; and

64 (F) an in-kind contribution.

65 (ii) "Contribution" does not include:

66 (A) services provided by an individual volunteering a portion or all of the individual's
67 time on behalf of the candidate if the services are provided without compensation by the
68 candidate or any other person;

69 (B) money lent to the candidate by a financial institution in the ordinary course of
70 business; or

71 (C) goods or services provided for the benefit of a candidate at less than fair market
72 value that are not authorized by or coordinated with the candidate.

73 (d) "Coordinated with" means that goods or services provided for the benefit of a
74 candidate are provided:

75 (i) with the candidate's prior knowledge, if the candidate does not object;

76 (ii) by agreement with the candidate;

77 (iii) in coordination with the candidate; or

78 (iv) using official logos, slogans, and similar elements belonging to a candidate.

79 (e) (i) "Expenditure" means any of the following made by a candidate or an agent of
80 the candidate on behalf of the candidate:

81 (A) any disbursement from contributions, receipts, or from an account described in
82 Subsection (3)(a)(i);

83 (B) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money,
84 or anything of value made for political purposes;

85 (C) an express, legally enforceable contract, promise, or agreement to make any
86 purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of
87 value for a political purpose;

88 (D) compensation paid by a candidate for personal services rendered by a person
89 without charge to a reporting entity;

90 (E) a transfer of funds between the candidate and a candidate's personal campaign
91 committee as defined in Section 20A-11-101; or

92 (F) goods or services provided by a reporting entity to or for the benefit of the
93 candidate for political purposes at less than fair market value.

94 (ii) "Expenditure" does not include:

95 (A) services provided without compensation by an individual volunteering a portion or
96 all of the individual's time on behalf of a candidate; or

97 (B) money lent to a candidate by a financial institution in the ordinary course of
98 business.

99 (f) "In-kind contribution" means anything of value other than money, that is accepted
100 by or coordinated with a candidate.

101 (g) (i) "Political consultant" means a person who is paid by a candidate, or paid by
102 another person on behalf of and with the knowledge of the candidate, to provide political
103 advice to the candidate.

104 (ii) "Political consultant" includes a circumstance described in Subsection (1)(g)(i),
105 where the person:

106 (A) has already been paid, with money or other consideration;

107 (B) expects to be paid in the future, with money or other consideration; or

108 (C) understands that the person may, in the discretion of the candidate or another
109 person on behalf of and with the knowledge of the candidate, be paid in the future, with money
110 or other consideration.

111 (h) "Political purposes" means an act done with the intent or in a way to influence or
112 tend to influence, directly or indirectly, any person to refrain from voting or to vote for or
113 against any candidate or a person seeking a municipal office at any caucus, political
114 convention, or election.

115 (i) "Reporting entity" means:

116 (i) a candidate;

117 (ii) a committee appointed by a candidate to act for the candidate;

118 (iii) a judge;

119 (iv) a judge's personal campaign committee as defined in Section 20A-11-101;

120 (v) a person who holds an elected municipal office;

121 (vi) a party committee as defined in Section 20A-11-101;

122 (vii) a political action committee as defined in Section 20A-11-101;

123 (viii) a political issues committee as defined in Section 20A-11-101;

124 (ix) a corporation as defined in Section 20A-11-101; or

125 (x) a labor organization, as defined in Section 20A-11-1501.

126 ~~[(b)]~~ (j) "Reporting limit" means for each calendar year:

127 (i) \$50; or

128 (ii) an amount lower than \$50 that is specified in an ordinance of the municipality.

129 (2) (a) A municipality may adopt an ordinance establishing campaign finance

130 disclosure requirements for a candidate that are more stringent than the requirements provided
131 in Subsections (3) and (4).

132 (b) The municipality may adopt definitions that are more stringent than those provided
133 in Subsection (1).

134 (c) If a municipality fails to adopt a campaign finance disclosure ordinance described
135 in Subsection (2)(a), a candidate shall comply with financial reporting requirements contained
136 in Subsections (3) and (4).

137 ~~[(2)]~~ (3) (a) ~~[(+)]~~ Each candidate ~~[for municipal office]~~:

138 ~~[(A)]~~ (i) shall deposit a ~~[campaign]~~ contribution in a separate campaign account in a
139 financial institution; and

140 ~~[(B)]~~ (ii) may not deposit or mingle any campaign contributions received into a
141 personal or business account.

142 ~~[(+)]~~ (b) Each candidate ~~[for municipal office]~~ who is not eliminated at a municipal
143 primary election shall file with the municipal clerk or recorder a campaign finance statement:

144 ~~[(A)]~~ (i) no later than seven days before the ~~[date of]~~ day on which the municipal
145 general election is held; and

146 ~~[(B)]~~ (ii) no later than 30 days after the ~~[date of]~~ day on which the municipal general
147 election is held.

148 ~~[(+)]~~ (c) Each candidate for municipal office who is eliminated at a municipal primary
149 election shall file with the municipal clerk or recorder a campaign finance statement ~~[no later~~
150 ~~than]~~ 30 days after the ~~[date of]~~ day on which the municipal primary election is held.

151 ~~[(b)]~~ (4) Each campaign finance statement under Subsection ~~[(2)(a)]~~ (3)(b) or (c) shall:

152 ~~[(+)]~~ (a) except as provided in Subsection ~~[(2)(b)(ii)]~~ (4)(b):

153 ~~[(A)]~~ (i) report all of the candidate's itemized and total:

154 ~~[(+ campaign)]~~ (A) contributions, including in-kind and other nonmonetary

155 contributions, received ~~[before the close of the reporting date]~~ up to and including five days

156 before the campaign finance statement is due, excluding a contribution previously reported;

157 and

158 ~~[(H) campaign]~~ (B) expenditures made ~~[through the close of the reporting date]~~ up to
159 and including five days before the campaign finance statement is due, excluding an expenditure
160 previously reported; and

161 ~~[(B)]~~ (ii) identify:

162 ~~[(H)]~~ (A) for each contribution that exceeds the reporting limit, the amount of the
163 contribution and the name of the ~~[donor]~~ contributor;

164 ~~[(H)]~~ (B) the aggregate total of all contributions that individually do not exceed the
165 reporting limit; and

166 ~~[(HH)]~~ (C) for each ~~[campaign]~~ expenditure, the amount of the expenditure and the
167 name of the recipient of the expenditure; or

168 ~~[(ii)]~~ (b) report the total amount of all ~~[campaign]~~ contributions and expenditures if the
169 candidate receives \$500 or less in ~~[campaign]~~ contributions and spends \$500 or less on the
170 candidate's campaign.

171 ~~[(3) (a) As used in this Subsection (3), "account" means an account in a financial~~
172 ~~institution:]~~

173 ~~[(i) that is not described in Subsection (2)(a)(i)(A); and]~~

174 ~~[(ii) into which or from which a person who, as a candidate for an office, other than a~~
175 ~~municipal office for which the person files a declaration of candidacy or federal office, or as a~~
176 ~~holder of an office, other than a municipal office for which the person files a declaration of~~
177 ~~candidacy or federal office, deposits a contribution or makes an expenditure.]~~

178 ~~[(b) A municipal office candidate shall include on any campaign finance statement~~
179 ~~filed in accordance with this section:]~~

180 ~~[(i) a contribution deposited in an account:]~~

181 ~~[(A) since the last campaign finance statement was filed; or]~~

182 ~~[(B) that has not been reported under a statute or ordinance that governs the account;~~
183 ~~or]~~

184 ~~[(ii) an expenditure made from an account:]~~

185 ~~[(A) since the last campaign finance statement was filed; or]~~

186 ~~[(B) that has not been reported under a statute or ordinance that governs the account.]~~

187 ~~[(4)]~~ (5) (a) A municipality may, by ordinance:

188 (i) provide a reporting limit lower than \$50;

189 (ii) require greater disclosure of ~~[campaign]~~ contributions ~~[and]~~ or expenditures than is
190 required in this section; and

191 (iii) impose additional penalties on candidates who fail to comply with the applicable
192 requirements beyond those imposed by this section.

193 (b) A candidate ~~[for municipal office]~~ is subject to the provisions of this section and
194 not the provisions of an ordinance adopted by the municipality under Subsection ~~[(4)]~~ (5)(a) if:

195 (i) the municipal ordinance establishes requirements or penalties that differ from those
196 established in this section; and

197 (ii) the municipal clerk or recorder fails to notify the candidate of the provisions of the
198 ordinance as required in Subsection ~~[(5)]~~ (6).

199 ~~[(5)]~~ (6) Each municipal clerk or recorder shall, at the time the candidate for municipal
200 office files a declaration of candidacy, and again 14 days before each municipal general
201 election, notify the candidate in writing of:

202 (a) the provisions of statute or municipal ordinance governing the disclosure of
203 ~~[campaign]~~ contributions and expenditures;

204 (b) the dates when the candidate's campaign finance statement is required to be filed;
205 and

206 (c) the penalties that apply for failure to file a timely campaign finance statement,
207 including the statutory provision that requires removal of the candidate's name from the ballot
208 for failure to file the required campaign finance statement when required.

209 ~~[(6)]~~ (7) Notwithstanding any provision of Title 63G, Chapter 2, Government Records
210 Access and Management Act, the municipal clerk or recorder shall:

211 (a) make each campaign finance statement filed by a candidate available for public
212 inspection and copying no later than one business day after the statement is filed; and

213 (b) make the campaign finance statement filed by a candidate available for public
214 inspection by:

215 (i) (A) posting an electronic copy or the contents of the statement on the municipality's
216 website no later than seven business days after the statement is filed; and

217 (B) verifying that the address of the municipality's website has been provided to the

218 lieutenant governor in order to meet the requirements of Subsection 20A-11-103(5); or

219 (ii) submitting a copy of the statement to the lieutenant governor for posting on the
220 website established by the lieutenant governor under Section 20A-11-103 no later than two
221 business days after the statement is filed.

222 ~~[(7)]~~ (8) (a) If a candidate fails to file a campaign finance statement before the
223 municipal general election by the deadline specified in Subsection ~~[(2)(a)(ii)(A)]~~ (3)(b)(i), the
224 municipal clerk or recorder shall inform the appropriate election official who:

225 (i) shall:

226 (A) if practicable, remove the candidate's name from the ballot by blacking out the
227 candidate's name before the ballots are delivered to voters; or

228 (B) if removing the candidate's name from the ballot is not practicable, inform the
229 voters by any practicable method that the candidate has been disqualified and that votes cast for
230 the candidate will not be counted; and

231 (ii) may not count any votes for that candidate.

232 (b) Notwithstanding Subsection ~~[(7)]~~ (8)(a), a candidate who files a campaign finance
233 statement seven days before a municipal general election is not disqualified if:

234 (i) the statement details accurately and completely the information required under
235 Subsection ~~[(2)(b)]~~ (4), except for inadvertent omissions or insignificant errors or inaccuracies;
236 and

237 (ii) the omissions, errors, or inaccuracies are corrected in an amended report or in the
238 next scheduled report.

239 ~~[(8)]~~ (9) A campaign finance statement required under this section is considered filed if
240 it is received in the municipal clerk or recorder's office by 5 p.m. on the date that ~~is it~~ it is
241 due.

242 ~~[(9)]~~ (10) (a) A private party in interest may bring a civil action in district court to
243 enforce the provisions of this section or an ordinance adopted under this section.

244 (b) In a civil action under Subsection ~~[(9)]~~ (10)(a), the court may award costs and
245 attorney fees to the prevailing party.

246 Section 2. Section **10-3-209** is enacted to read:

247 **10-3-209. Personal use expenditure -- Authorized and prohibited uses of**
248 **campaign funds -- Enforcement -- Penalties.**

249 (1) Unless a municipality adopts by ordinance more stringent definitions, the following
250 are defined terms for the purposes of this section:

251 (a) "Candidate" means a person who:

252 (i) files a declaration of candidacy for municipal office; or

253 (ii) receives contributions, makes expenditures, or gives consent for any other person to
254 receive contributions or make expenditures to bring about the person's nomination or election
255 to a public office.

256 (b) "Officeholder" means a person who is elected to and currently holds a municipal
257 office.

258 (c) (i) "Personal use expenditure" means an expenditure that:

259 (A) is not excluded from the definition of personal use expenditure by Subsection (2)
260 and primarily furthers a personal interest of a candidate or officeholder or a candidate's or
261 officeholder's family, which interest is not connected with the performance of an activity as a
262 candidate or an activity or duty of an officeholder; or

263 (B) would cause the candidate or officeholder to recognize the expenditure as taxable
264 income under federal law.

265 (ii) "Personal use expenditure" includes:

266 (A) a mortgage, rent, utility, or vehicle payment;

267 (B) a household food item or supply;

268 (C) clothing, except for clothing bearing the candidate's name or campaign slogan or
269 logo and that is used in the candidate's campaign;

270 (D) an admission to a sporting, artistic, or recreational event or other form of
271 entertainment;

272 (E) dues, fees, or gratuities at a country club, health club, or recreational facility;

273 (F) a salary payment made to a candidate, officeholder, or a person who has not
274 provided a bona fide service to a candidate or officeholder;

275 (G) a vacation;

276 (H) a vehicle expense;

277 (I) a meal expense;

278 (J) a travel expense;

279 (K) a payment of an administrative, civil, or criminal penalty;

280 (L) a satisfaction of a personal debt;
281 (M) a personal service, including the service of an attorney, accountant, physician, or
282 other professional person;
283 (N) a membership fee for a professional or service organization; and
284 (O) a payment in excess of the fair market value of the item or service purchased.
285 (2) As used in this section, "personal use expenditure" does not mean an expenditure
286 made:
287 (a) for a political purpose;
288 (b) for candidacy for public office;
289 (c) to fulfill a duty or activity of an officeholder;
290 (d) for a donation to a registered political party;
291 (e) for a contribution to another candidate's campaign account, including sponsorship
292 of or attendance at an event, the primary purpose of which is to solicit a contribution for
293 another candidate's campaign account;
294 (f) to return all or a portion of a contribution to a contributor;
295 (g) for the following items, if made in connection with the candidacy for public office
296 or an activity or duty of an officeholder:
297 (i) (A) a mileage allowance at the rate established by the Division of Finance under
298 Section 63A-3-107; or
299 (B) for motor fuel or special fuel, as defined in Section 59-13-102;
300 (ii) a meal expense;
301 (iii) a travel expense, including an expense incurred for airfare or a rental vehicle;
302 (iv) a payment for a service provided by an attorney or accountant;
303 (v) a tuition payment or registration fee for participation in a meeting or conference;
304 (vi) a gift;
305 (vii) a payment for the following items in connection with an office space:
306 (A) rent;
307 (B) utilities;
308 (C) a supply; or
309 (D) furnishing;
310 (viii) a booth at a meeting or event; or

311 (ix) educational material;

312 (h) to purchase or mail informational material, a survey, or a greeting card;

313 (i) for a donation to a charitable organization, as defined by Section 13-22-2, including
314 admission to or sponsorship of an event, the primary purpose of which is charitable solicitation,
315 as defined in Section 13-22-2;

316 (j) to repay a loan a candidate makes from the candidate's personal account to the
317 candidate's campaign account;

318 (k) to pay membership dues to a national organization whose primary purpose is to
319 address general public policy;

320 (l) for admission to or sponsorship of an event, the primary purpose of which is to
321 promote the social, educational, or economic well-being of the state or the candidate's or
322 officeholder's community; or

323 (m) for one or more guests of an officeholder or candidate to attend an event, meeting,
324 or conference described in this Subsection (2).

325 (3) (a) A municipality may adopt an ordinance prohibiting a personal use expenditure
326 by a candidate with requirements that are more stringent than the requirements provided in
327 Subsection (4).

328 (b) The municipality may adopt definitions that are more stringent than those provided
329 in Subsection (1) or (2).

330 (c) If a municipality fails to adopt a personal use expenditure ordinance described in
331 Subsection (3)(a), a candidate shall comply with the requirements contained in Subsection (4).

332 (4) A candidate or an officeholder may not use money deposited in a campaign account
333 for:

334 (a) a personal use expenditure; or

335 (b) an expenditure prohibited by law.

336 (5) A municipality may enforce this section by adopting an ordinance:

337 (a) to provide for the evaluation of a campaign finance statement to identify a personal
338 use expenditure; and

339 (b) to commence informal adjudicative proceedings if, after an evaluation described in
340 Subsection (5)(a), there is probable cause to believe that a candidate or officeholder has made a
341 personal use expenditure.

342 (6) If, in accordance with the proceedings described in Subsection (5)(b) established in
343 municipal ordinance, a municipality determines that a candidate or officeholder has made a
344 personal use expenditure, the municipality:
345 (a) may require the candidate or officeholder to:
346 (i) remit an administrative penalty of an amount equal to 50% of the personal use
347 expenditure to the municipality; and
348 (ii) deposit the amount of the personal use expenditure in the campaign account from
349 which the personal use expenditure was disbursed; and
350 (b) shall deposit the money received under Subsection (6)(a)(i) in the municipal
351 general fund.